IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.3501 OF 2003

The Suryodaya Co-operative Housing
Society Ltd..... ..Petitioner

Versus

Shri Babulal alias Babulnath
Ramchandra Bandekar & Ors.....Respondents

Mr. K.S. Dewal, for the Petitioner
Mrs. M.P. Thakur,AGP for Respondent Nos. 2 to 6.
Mr. C.G.Gavnekar, for Respondent No.1.

CORAM: F.I. REBELLO &
DR. D.Y.CHANDRACHUD, JJ.
DATE : 13th January,2006

P.C.:

. Petitioner is aggrieved by the action of respondent Nos. 2 to 6 in allotting a plot of land out of the larger land which was granted to the petitioner society. It appears that the respondent NO.1 made some representations and based on the same it was held that allotment of portion of land and giving the model house constructed thereon to respondent No.1 since 1956 is in violation of conditions allotting land to society and consequently directed to take possession of 800 sq. yard area for model house from society and record it in the name of Government. The Sub Divisional Officer, it appears, gave notice to the society and by order dated 9th September, 2002 decided to take back the land by recording the name of the Government. It is against this order that the Appeal was preferred by the petitioners before the respondent No.5. By the impugned order of 3rd January, 2003 the

respondent held that the Government as on 10th July, 2002 had held that there is a violation of condition in respect of suit land and, therefore, direction to take back the land cannot be challenged before the Court and consequently dismissed the same. It is against that order the present petition has been preferred.

2. It may be pointed out that the said order has been challenged before this Court and interim order of status quo came to be passed on 2nd June, 2003. That order was continued from time to time pending the hearing of this petition.

3. It is the grievance of the petitioner that on account of various directions issued by the Government if the matter is remanded to the respondent No.5 he will not get a fair hearing as the respondent NO.5 in the impugned order itself has set out that in view of the Government decision the Appeal is not maintainable.

4. Reply has been filed on behalf of the respondents as also Respondent No.1. It is not necessary for us to set out the facts in extenso for the order to be passed.

5. We find that the 5th respondent could not have dismissed the Appeal on the ground that the Government has taken the decision. The respondent No.5 had to address itself to the various issues raised by Petitioners including that the allotment could not have been made in favour of the respondent

No.1 and that they being in possession pursuant to allotment of land in their favour the Government had to follow the procedural requirements if it wanted to resume the land. It is also pointed out that there is a procedure for the same. At any rate it is pointed out that the respondent No.1 who was occupying the premises as tenant could not have allotted a plot of land of 800 sq. yard on which the model house stands constructed by the society against the other members who have been allotted 400 sq. yards of land. Further revocation was done because of the acts of Respondent No.5. The disputed land is 800 sq. yards.

6. It is not necessary for us to deal with these controversies and other contentions urged on behalf of the petitioners. Suffice it to say that all these issues will be open for consideration including the contention of the Petitioner, respondent No.1 and the other respondents. It is further made clear that the respondent No.5 would not be bound by any decision/communication issued by the other State respondents and will dispose of the appeal strictly based on the terms of the grant and the law in force. The Appeal, at any rate, to be disposed of not later than 6 months from a copy of this order being served on respondent No.5. Rule made absolute accordingly. No order as to costs.

(F.I.REBELLO, J.)

(DR. D.Y.CHANDRACHUD, J.)